

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based Services)	
to Rural Areas and Promoting Opportunities for)	WT Docket No. 02-381
Rural Telephone Companies to Provide Spectrum-)	
Based Services)	

To: The Commission

COMMENTS OF RURAL CELLULAR ASSOCIATION

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SUMMARY

The Commission's policies for promoting the provision of spectrum-based services in rural areas are due for an update. The use of auctions to award spectrum licenses favors entities with access to virtually limitless capital from the public markets. This works to the disadvantage of members of Rural Cellular Association ("RCA") that normally depend upon internal resources and debt financing for capital expenditures. The size of license areas offered at auction should be smaller to allow rural service providers to compete successfully to acquire needed spectrum. Use of Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") as geographic boundaries for all licenses offered in an auction is the proper approach, allowing all bidders to mix and match rural and urban areas according to their plans and capabilities. Furthermore, the use of bidding credits to assist small companies at auction is not particularly effective, as specially organized bidders adeptly incorporate large company participation in their financial affairs, and still qualify for bidding credits.

RCA encourages the Commission to continue to foster development of facilities-based competition in local telecommunications services through rules and policies that allow wireless carriers to attain Eligible Telecommunications Carrier ("ETC") status and to receive support from the federal Universal Service Fund ("USF"). USF support to wireless ETCs promotes investment in rural infrastructure, improves the quality and variety of services offered, and increases competition and public safety in rural areas.

The Commission should be aware that small wireless carriers are being excluded from automatic roaming agreements negotiated between and among large wireless carriers. Large carriers

should not be permitted to minimize customer access to small carriers' wireless networks compatible with their own by means of omitting System Identification Codes. The Commission's direct involvement is necessary because there is a disparity in bargaining power between small and large wireless carriers.

RCA members have observed that mid-license construction requirements often motivate minimal construction designed to save licenses, limiting service and competition in rural markets and lessening incentives for partitioning and disaggregation. Large companies already enjoy a disparity of bargaining power in establishing the terms for any partitioning and disaggregation. RCA suggests that the Commission adopt a program to accept unused spectrum and geographic license area for monetary credit toward a carrier's future auction purchases, and then reoffer the returned spectrum, allowing its purchase at auction by an entity with a plan to make use of the partitioned and/or disaggregated spectrum.

Finally, the FCC should address the disproportionate burden placed upon rural carriers by unfunded mandates. Mandates such as E911, CALEA and local number portability strain small carriers' financial ability to expand and improve CMRS services in response to customers' expressed needs.

The FCC can facilitate better use of spectrum in rural markets by spectrum licensing using MSAs and RSAs, preservation of USF high cost funding for wireless carriers, promotion of automatic roaming agreements, elimination of mid-term construction requirements, use of auction credits for return of unused spectrum, and avoidance of unfunded mandates. These changes in FCC policy will promote spectrum use in rural markets and benefit the public accordingly.

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COMMENTS

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Comments in response to the invitation of the Federal Communications Commission (“FCC” or “Commission”)² to comment on the effectiveness of the FCC’s current regulatory tools in facilitating the delivery of spectrum-based services to rural areas. The FCC’s Notice of Inquiry (“NOI”) seeks comment on the Commission’s policies to promote the further development and deployment of such services to rural areas, and on the extent to which entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services.

I. Introduction

1. RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide

1 RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

2 *Notice of Inquiry*, WT Docket No. 02-381, FCC 02-325, released December 20, 2002.

service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside.

2. It is intuitive that fewer people and lower population density in rural areas require that carriers serving rural areas adopt a business model that is different than that of large carriers serving metropolitan areas. Wireless carriers serving rural areas must recover their capital expenditures and operating costs from fewer customers and from roamers, and it is not always possible to scale back such costs proportionately. As a result, rural carriers' costs per subscriber are most likely higher than those of large carriers that can spread costs across the high- and low-density markets they serve.

3. RCA members have an outstanding record of service in the rural markets they serve. And they have a desire to improve service offerings as technology evolves, allowing rural consumers to benefit from the same advances in telecommunications as are enjoyed by urban citizens. To that end, RCA will offer in these comments the observations and recommendations expressed by its members, and suggest changes in Commission rules and policies where changes would assist the Commission in making available "...to all the people of the United States... a rapid, efficient, nationwide and worldwide wire and radio communication service with adequate facilities at reasonable charges." 3 RCA will also comment on aspects of the Commission's regulatory system that are working and should not be changed.

II. Spectrum Auctions

4. Inherent Bias in Auction Process. The use of auctions as the primary means to assign spectrum to licensees inherently favors entities with access to money from the public markets over

entities that normally depend upon internal resources and debt financing. RCA members are in the second category, and must compete in auctions against entities that can sell additional stock or bonds to raise virtually any sum that is required to cover the cost of success in acquiring spectrum at auctions.⁴ The Commission should be attentive to how its decisions that govern each auction may add to the large-company advantage that is inherent in the auction system and impact (i) the opportunities of small entities to acquire spectrum; and (ii) the likelihood that purchased spectrum will be utilized in rural areas.

5. Geographic License Areas. The size of license areas offered at auction is frequently too large to allow rural service providers to compete successfully in the acquisition of needed spectrum. Large license areas such as Economic Areas (“EAs”), or even larger areas such as Major Economic Areas (“MEAs”), contain urban areas with high population densities that make the purchase of license rights too expensive for an entity that desires to serve the rural areas alone. **Use of Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”) as license areas is the proper balance in market size and allows all bidders to mix and match rural and urban areas according to their individual business plans and financial capabilities.** The availability of RSA licenses, which by definition encompass only counties that are outside of all MSAs, is especially important to small entities, and it does not disadvantage the large entities because large

3 47 U.S.C. Section 151.

4 A few small entities with financial ties to large entities may have the same abilities as large, publicly-held companies to raise capital in order to acquire spectrum at auction. As these comments will explain, the Commission’s attempts to assist small entities through bidding credits have not been effective to level the playing field for small entities that are without ties to large companies, as opposed to entities that are organized in a manner to capture bidding credits but which also benefit from access to capital from large companies.

companies can make an independent choice of whether to pursue licenses for rural markets in addition to metropolitan markets.

6. Uniformity Needed in Geographic License Areas. Not only should MSA- and RSA-sized areas be available in auctions, but **all licenses offered in a given auction should be MSA- and RSA-sized.** This would promote access to spectrum by entities of all sizes and encourage deployment of service over the purchased spectrum. When the Commission sells EA- or MEA-sized license areas, it is effectively limiting competition for those licenses to a smaller subset of entities that can afford to bid on the concentrations of populations in those areas.⁵ When licenses covering larger areas are offered in combination with MSA/RSA sized licenses,⁶ maximum competition among bidders is possible only as to the MSA/RSA licenses, which serve as the common denominator of available licenses.

7. Moreover, it is an inefficient assignment of spectrum to group rural counties with metropolitan areas when geographic areas are licensed. Companies that can afford to purchase metropolitan area licenses may have less interest in serving the rural areas, and yet they are required to purchase both when the Commission bundles the rural counties with densely populated counties. While the Commission's rules allow large companies to partition and assign unneeded portions of license areas, such areas are often not partitioned for a variety of reasons.⁷ The effect of excessively

5 The Commission establishes minimum bids for licenses based upon the population of the market area.

6 In Auction #44, for the Lower 700 Band licenses, the Commission offered MSA/RSA-sized licenses as well as licenses for larger geographic areas. The Commission may take official notice of the fact that interest and bidding activity on the MSA/RSA licenses substantially exceeded that evidenced for the larger license areas.

7 See Section VI, *infra*.

large or inefficiently sized geographic license areas is a lost opportunity to allow spectrum to reach an entity that would make better use of it.

8. Bidding Credits and Eligibility Limitations. Attempts by the Commission to assist “Designated Entities” such as “Small Businesses” or “Very Small Businesses” compete in spectrum auctions generally have not achieved the intended purpose. Despite efforts by the Commission to offer the benefits only to those that are within the financial limitations specified, some bidders have been able to qualify for bidding credits or license eligibility and also have the advantage of large company participation in their financial affairs. There is no indication that rules of the Commission have been violated, for it is simply not possible (and may be undesirable for a variety of reasons) for the Commission to envision and prohibit every possible type of financial benefit that a large company could provide to a small business bidder. Efforts by the Commission to assist small and very small businesses in competing for licenses are commendable, but not particularly effective. Nevertheless, if the Commission uses bidding credits or eligibility limitations in the future, rural wireless carriers should be given no lesser access to such opportunities than is granted to rural telephone companies with whom rural wireless carriers compete in the offering of local access service in rural areas.

III. Preservation of Universal Service Fund High Cost Support to Wireless Eligible Telecommunications Carriers

9. The Commission to date has successfully encouraged the development of competition in local telecommunications services in rural areas through competitively neutral rules and policies that allow wireless carriers to obtain Eligible Telecommunications Carrier (“ETC”) status upon appropriate showings, and thereafter to receive support from the federal Universal Service Fund

(“USF”). USF support to wireless ETCs permits increased investment in rural infrastructure. Better infrastructure allows wireless carriers to improve the quality and variety of services offered, and serves to promote competition and public safety in rural areas, all of which serves the public interest.

10. Competitive entry in local markets is a policy goal established by Congress and implemented by the Commission.⁸ Through competitive entry, particularly by facilities-based carriers, the public benefits from additional service offerings and price competition. RCA could not agree more with Chairman Michael K. Powell’s observation that, while “[r]ural America has greatly benefited from the competition brought about by spectrum-based services . . . those benefits have been achieved through nation-wide policy making.”⁹ It is critical, therefore, that the Commission remain engaged to ensure that the full benefits of spectrum-based competition are available to all rural consumers.

11. The provision of USF support on a competitively and technologically neutral basis¹⁰ promotes investment in rural area infrastructure that otherwise would not be economically feasible. USF support allows for the deployment of infrastructure to offer high-quality services beyond

8 See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (purpose of 1996 amendments to the Communications Act of 1934 is “to provide for a pro-competitive, de-regulatory national policy framework” aimed at fostering rapid deployment of telecommunications services to all Americans “by opening all telecommunications markets to competition. . .”). See also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 15505 (1996), *subseq. hist. omitted* (“*Local Competition Order*”) (“Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network . . . The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition.”).

9 See *Notice of Inquiry*, at p. 19, Separate Statement of Chairman Michael K. Powell.

10 See *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801-02 (1997) (“competitive neutrality means universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another”).

profitable areas such as towns and major roads, and ensures that low-income consumers can access such offerings through discounts available under the Lifeline and Link-up programs. Without competitively and technologically neutral rules for designation and payment of support to competitive ETCs, wireless carriers face long odds in providing a viable alternative to service offered by wireline monopolies “that enjoy not only the technical, economic, and marketing advantages of incumbency, but also subsidies that are provided only to the incumbents.”¹¹

12. A desire to improve service offerings in rural areas has resulted in an increasing number of RCA members pursuing designation as wireless ETCs to qualify for support from the USF. RCA endorses all such efforts to improve rural area infrastructure and urges the Commission to maintain its current rules and policies that ensure the designation of competitive ETCs pursuant to competitively neutral criteria and allow competitive ETCs, including wireless ETCs, to receive high-cost support that is “portable”, *i.e.*, equivalent on a line-to-line basis to the amount paid to the incumbent landline carrier in the same area.

13. Landline ETCs have had the benefits of USF support since the USF was created. Wireless ETCs contribute to the USF and should not be placed at a competitive disadvantage, especially considering that they provide every one of the essential services required of landline ETCs. When they receive USF support wireless carriers are able to construct additional cell sites and make other improvements to wireless infrastructure that promote public safety by allowing more 911 emergency calls to be completed from mobile phones.

11 *Local Competition Order, supra*, 11 FCC Rcd at 15507.

14. RCA opposes any proposals for new or amended rules that would reduce USF support paid to wireless ETCs and place wireless carriers at a competitive disadvantage. Such proposals will only serve to prevent rural consumers from having access to similar choices among services at rates comparable to those available in urban areas.¹² Accordingly, the Commission should preserve its current rules, including those ensuring that a wireless ETC is paid high-cost support “for each line it serves in a particular service area based on the support the incumbent LEC would receive for each such line”.¹³ The Commission should also continue to carry out its role under Section 214(e)(5) of the Act by providing a streamlined process that ensures swift concurrence with state decisions to redefine rural ILEC service areas so as to remove obstacles to competitive entry.¹⁴ When exercising its ETC designation authority pursuant to Section 214(e)(6), the Commission should continue to redefine service areas in a pro-competitive manner and promptly seek state concurrence.¹⁵

15. If USF support to wireless ETCs is curtailed through changes to these or other competitively neutral rules and policies, it will limit the ability of wireless carriers to improve facilities and introduce new and higher-quality wireless services in rural areas. Only a very small percentage of the total USF support payments to ETCs is received by wireless ETCs,¹⁶ and the

12 See 47 U.S.C. § 254(b)(3).

13 47 C.F.R. § 54.307(a)(1).

14 See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(c)(3).

15 See, e.g., *Cellular South License, Inc.*, DA 02-3317 at ¶ 36 (W.C.B. rel. Dec. 4, 2002) (app. for rev. pending) (“*Cellular South Alabama ETC Order*”); *RCC Holdings, Inc.*, DA 02-3181 at ¶ 38 (W.C.B. rel. Nov. 27, 2002) (app. for rev. pending) (“*RCC Alabama ETC Order*”).

16 See *Federal-State Joint Board on Universal Service*, FCC 02-307 at ¶ 4 (rel. Nov. 8, 2002) (“*Joint Board Referral*”) (noting that “competitive ETCs received approximately \$14 million out of \$803 million high-cost

results of those payments are largely unrealized due to the brief time in which wireless ETCs have received the funds. Under the competitively neutral framework provided by Congress and the Commission, at least 24 wireless carriers have received ETC designation from the Commission and state PUCs in rural areas of least 16 states and territories. As more wireless ETC designations are made, and as newly designated wireless ETCs continue to apply high-cost funds to the facilities needed for quality service alternatives in rural areas, the true benefit of the Commission's competitively neutral universal service policies will become still more apparent. The Commission should recognize that its rules and policies in this area are effective as written to promote competition and infrastructure improvements.

IV. Automatic Roaming Should be Encouraged by Commission Rules and Policy

16. Some small rural wireless carriers with technically compatible systems encounter problems in attempting to negotiate automatic roaming agreements with large national wireless carriers. Small wireless carriers often have better coverage and service in their rural markets than their larger competitors, but find that they are excluded from automatic roaming agreements negotiated between and among large wireless carriers.¹⁷ Exclusion or threatened exclusion of small carriers can have a serious financial impact upon the small carriers while, to the roaming customers of both carriers, it can result in interruption of wireless service and exorbitantly high charges for calls that must be placed through "manual" roaming arrangements. Large carriers should not be permitted

support disbursed in the third quarter of 2002, or 1.8% of total high-cost support."'). While the Commission correctly observed that this is up from 0.4% in the first quarter of 2001, such an increase is hardly alarming given that the starting point was zero.

17 It may be that large carriers, for administrative convenience, prefer to negotiate automatic roaming agreements primarily with other large carriers.

to minimize customer access to small carriers' wireless networks compatible with their own by means of omitting System Identification Codes and any other necessary information that allows for automatic roaming

17. Commission rules and policies should encourage automatic roaming agreements among wireless carriers that are technologically compatible. The Commission's direct involvement is necessary because there is a disparity in bargaining power between small and large wireless carriers, and when negotiations fail, a "default" arrangement for automatic roaming should be mandated. Otherwise, no agreements may be reached, small carriers will be left out of the national roaming plan and roamers will be subjected to interruptions in service and high costs from manual billing arrangements. The Commission should invite comments on how its rules and policies should be supplemented to promote efficient, automatic access to rural wireless carriers' networks.

V. Mid-License Term Construction Requirements Are Not Effective

18. Performance requirements to maintain licenses fail to achieve the goal of avoiding spectrum warehousing. Rules that require showings of construction covering a percentage of population or geographic license area often motivate only minimal construction designed to save licenses, without promoting improved service or competition in rural markets. If a carrier satisfies a minimum performance requirement, it will have less incentive to enter into roaming agreements with rural carriers that have constructed extensive facilities in the area. As a result, roamers may be relegated unnecessarily to manual roaming arrangements instead of benefiting from automatic roaming on a fully built-out rural area system.

19. Wireless carriers with a business plan to compete in rural markets are not motivated by performance requirements. They will construct when there is an economic incentive to do so. Rules that compel limited construction according to arbitrary standards do not result in better service to the public. In fact, those rules encourage limited construction that subsequently lessens incentives for partitioning and disaggregation.

VI. Partitioning and Disaggregation to the Commission for Credit in Future Auctions Would Improve Access to Unused Spectrum by Entities Desiring to Serve Rural Areas

20. Partitioning and disaggregation can be effective under some circumstances, but any use of these spectrum reassignment methods is an indication that appropriately sized geographic license areas and useful blocks of spectrum were not available for purchase at the outset. The license areas offered in future auctions should be in smaller, more useful units, notably MSAs and RSAs rather than EAs or MEAs.

21. When a geographic area or block of spectrum becomes available for partitioning, it is almost always a large wireless company that is offering it to a small wireless carrier that has experience in serving rural areas. Not surprisingly, the large companies have disproportionate bargaining power in establishing the terms for any partitioning and disaggregation. Large companies that acquire rural area spectrum when they purchase large license areas can meet FCC performance requirements without ever serving the rural areas. The unfortunate result is that the large companies can dictate terms for partitioning and disaggregation or decline to make the area and spectrum available at all. Typical conditions imposed upon partitionees and disaggregatees include network build-out requirements according to the large company's specifications, and agreement to a large

company's proposed roaming rates without any indication of whether the investment can be recouped.

22. The Commission could achieve dual goals of avoiding spectrum warehousing and promoting use of spectrum in rural areas if the Commission adopted a program to accept unused spectrum and geographic license area for monetary credit toward a carrier's future auction purchases. The Commission could then reoffer the returned spectrum, allowing its purchase at auction by an entity with a plan to make use of the partitioned and/or disaggregated spectrum.¹⁸ This system need not replace private market agreements for partitioning and disaggregation; rather, it could be used to augment the current system and provide incentive for the return of spectrum for reauction. If carriers can purchase spectrum in more useful blocks and return any excess spectrum, the Commission will perform its responsibilities more effectively and carriers can acquire and dispose of spectrum more efficiently.

VII. Unfunded Mandates on Wireless Carriers Impede System Improvements and Should be Avoided

23. Every new, post-license acquisition financial obligation that is placed upon wireless carriers serves to reduce, without regard to available resources, a carrier's ability to add to facilities and otherwise improve wireless service. Rural wireless carriers in particular are burdened by unfunded mandates because they must devote a disproportionate amount of their capital budgets to funding these obligations.

24. E911 Phase II. Absent a sufficient cost reimbursement program, requirements upon rural wireless carriers to deploy E911 Phase II on a near-term schedule **lessen their ability to**

18 The Commission might study the federal government's plan that allows sale of tax credits by those who

improve coverage and service that would allow for more basic 911 calls to be completed successfully. Enhanced 911 service, especially Phase II, is expensive for wireless carriers. Rural carriers that use Time Division Multiple Access (“TDMA”) as their digital standard are in an especially difficult position when it comes to E911 Phase II implementation deadlines. Any additional investment would be stranded in a platform that is no longer supported by its vendors.

25. As already observed, rural wireless carriers are at a relative disadvantage in access to capital relative to large, publicly owned wireless carriers. With that in mind, the high costs for Phase II implementation faced by rural wireless carriers means that disproportionately large amounts of rural carriers’ available annual capital expenditure budgets must be allocated for Phase II compliance. For example, First Cellular of Southern Illinois (“First Cellular”) totals its costs to comply with Phase II at \$1 million this year, representing 14.3% of the company’s total capital budget. Fulfilling this obligation without a cost reimbursement program diverts capital that would have allowed First Cellular to construct several additional cell sites this year and improve coverage area in the process. Better coverage would allow basic 911 calls to be completed in more of the company’s license area; instead, Phase II of E911 will be available in case a caller cannot identify his or her location, but other calls for help may not be completed because coverage is not improved. A similar problem will be faced by Cellular Network Partnership (“CNP”) in Oklahoma when it receives a request for Phase II implementation from a local Public Safety Answering Point. CNP estimates its cost for Phase II as between \$1.44 million and \$2.16 million, a very substantial figure under its capital expenditure budget. The Commission should recognize that rural carriers in

cannot make economic use of them.

particular cannot fund government mandates without diminishing their abilities to improve wireless services in other important respects.

26. Local Number Portability (“LNP”). The Commission should eliminate the wireless LNP obligation affecting carriers outside the top 100 markets. Cost of compliance for First Cellular will be \$200,000; for CNP the cost will exceed \$100,000. Such amounts for software do not include monthly service bureau costs. Customer churn rates are lower in rural areas and there is insufficient evidence that the cost of providing LNP is warranted. At a minimum, the LNP requirement should be delayed for a substantial period of time while technology improvements evolve. Further consideration of the relative costs and benefits of LNP is needed before it is mandated in rural areas.

27. CALEA. Compliance with terms of the Communications Assistance for Law Enforcement Act¹⁹ without funding to carriers has been burdensome. Most rural carriers, including First Cellular and CNP, have never received an FBI wiretap request in more than 10 years of operation. Equipment vendors that received government money to develop software to allow for CALEA compliance charge substantial sums to carriers for software upgrades. On top of that, carriers face costs for hardware setup. CNP estimates its costs for hardware at \$20,000, and its monthly costs at \$3,000. Rural carriers are prepared to cooperate but they should not be expected to pay the cost of each new law enforcement aid that the federal government desires. It is understood that the Commission cannot grant relief to wireless carriers from the cost of CALEA compliance. Nonetheless the Commission should be aware of CALEA costs that must be borne by carriers and attempt to avoid imposing other obligations that are financially burdensome and serve as a hindrance to rural area service improvements.

VIII. Conclusion

28. RCA encourages the Commission to take the actions necessary to promote efficient deployment of spectrum in rural areas. Licensing the spectrum to those who most want to use it to serve rural customers is a more realistic approach than licensing it to those who have the most resources and must purchase rural market areas in order to purchase the metropolitan areas. Eliminating construction benchmarks will discourage licensees from building the minimum and leaving rural areas unserved. Such licensees should be provided with credit to return unused spectrum to the Commission, for award to entities genuinely interested in building out the unserved areas.

29. The Commission should also address the bargaining disparity that is impeding automatic roaming agreements in rural areas, and it should seek to mitigate the financial burdens placed upon wireless carriers by unfunded federal mandates. Rural services and competition will be greatly enhanced by the FCC's protection of wireless carriers' access to USF funds, advancing the goal of the USF system to deliver telecommunications services to all Americans while promoting infrastructure improvements and public safety. The Commission's efforts in this direction will lead to a vigorous and competitive telecommunications industry in rural markets and benefit the public accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 3rd day of February, 2003, sent by hand-delivery, a copy of the foregoing COMMENTS to the following:

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